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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,041	12/20/2001	Erica Louise Evans	CM2334	5058
27752	7590	04/29/2004		EXAMINER BOYER, CHARLES I
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			ART UNIT 1751	PAPER NUMBER
DATE MAILED: 04/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/019,041	EVANS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles I Boyer	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 December 2001.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-17 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04/25/04.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the quaternary ammonium agents defined in the specification, does not reasonably provide enablement for any compound containing a quaternary ammonium group. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The examiner notes that betaines, cationic polymers, and diquaternary ammonium surfactants all meet the "quaternary ammonium agent" limitation of the claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Before citing the references against the present claims, the examiner would like to state for the record that due to the breadth of the present claims, requiring a "quaternary ammonium agent," the examiner estimates there are scores of references that would anticipate at least claim 1 of the present application. Betaines are very common surfactants for use in skin cleansers, and as they have a quaternary ammonium group, satisfy the quaternary ammonium agent limitation of the claims. Furthermore, conditioners for the hair (and therefore the scalp), very often employ quaternary ammonium agents and humectants. However, in order to avoid an onerous action, the examiner has taken into consideration the present invention as a whole, in order to identify the closest prior art, which art is cited below. That is, only compositions drawn specifically to skin treating and only those quaternary ammonium agents defined in applicants' specification will be cited against the claims at this time. Applicants should amend the claims to reflect the quaternary ammonium agents defined in the specification, thereby eliminating prior art containing betaines and cationic polymers in their reply to this action.

4. Claims 1-7, 9-14, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bann, US 3,666,690.

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Bann teaches skin cleansing compositions (see abstract). An example of such a composition comprises 8% cetyl dimethyl ethyl ammonium bromide and 13% glycerine (col. 2, example 1). These compositions are applied to the skin and then flushed with water (col. 2, line 56). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

5. Claims 1, 3-6, 9, 11-13, 16, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Nagashima et al, US 6,269,817.

Nagashima et al teach skin care cosmetic compositions (see abstract). An example of such a composition comprises 0.3% stearyl trimethyl ammonium chloride and 33.3% sorbitol (col. 20, table 3). These compositions are applied to the face and then washed off with water (col. 20, lines 5-10). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

6. Claims 1, 2, 4-7, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitamura et al, US 5,306,444.

Kitamura et al teach skin treatment compositions (see abstract). An example of such a composition comprises 4.2% alkyltrimethyl ammonium bromide and 3% glycerine (col. 11, table II-1). These compositions are applied to the skin as a shaving foam and then rinsed off with water (col. 11, lines 20-32). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

7. Claims 1, 2, 4-7, 16, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Keys et al, US 6,211,139.

Keys et al teach skin conditioner compositions (see abstract). An example of such a composition comprises 1.18% hexamethylene diamine diesterquat and 1.6% glycerine (col. 54, example 30). With respect to the compositions being rinsed from the skin, it is well known to those of ordinary skill and consumers alike, that skin cleansing or conditioners are removed from the skin by rinsing with water. As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

8. Claims 1, 2, 4-7, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gesslein et al, WO 90/03161.

Gesslein et al teach hair and skin conditioning compositions (see abstract). An example of such a composition is a bath gel comprising 5% oleamidopropyl dimethyl dihydroxypropyl ammonium chloride and 2% glycerine (page 34, example 4). With respect to the compositions being rinsed from the skin, it is well known to those of ordinary skill and consumers alike, that bath gels are removed from the skin by rinsing with water. As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al, US 6,037,315.

Franklin et al teach skin conditioning compositions containing diester quaternary ammonium compounds (see abstract). Skin care compositions will contain DEQA compounds and may further contain a humectant such as glycerine (col. 19, lines 4-68). Accordingly, it would have been obvious to one of ordinary skill in the art to prepare a composition containing a DEQA and glycerine as such components are taught as essential and suitable in the skin conditioning compositions of Franklin et al.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,534,265 and US 5,607,980 are cumulative to the references cited above and are both anticipatory references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles I Boyer  
Primary Examiner  
Art Unit 1751